



# THE INTERIM

A Monthly Newsletter of the Montana Legislative Branch

Volume XIV, No. 16

Helena, Montana

September 2004

## IN THIS ISSUE

LEGISLATIVE COUNCIL ON RIVER GOVERNANCE .....	1
ENVIRONMENTAL QUALITY COUNCIL .....	2
CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE .....	3
SJR 32 SUBCOMMITTEE ON MEDICAL LIABILITY INSURANCE .....	3
STATE-TRIBAL RELATIONS COMMITTEE .....	4
LEGISLATIVE COUNCIL .....	5
STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE .....	5
ECONOMIC AFFAIRS COMMITTEE .....	6
REVENUE AND TRANSPORTATION COMMITTEE .....	6
LAW AND JUSTICE COMMITTEE .....	6
LEGISLATIVE FINANCE COMMITTEE .....	7
SUBCOMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET .....	7
TIME AND TIDE .....	7
THE BACK PAGE .....	8
REFLECTIONS OF A DRUDGE .....	8
INTERIM CALENDAR .....	11
COMING IN NOVEMBER .....	13

## THE INTERIM

Montana Legislative Services Division  
Room 110, State Capitol  
PO Box 201706  
Helena, MT 59620-1706  
Phone: (406) 444-3064  
Fax: (406) 444-3036

**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

## LEGISLATIVE COUNCIL ON RIVER GOVERNANCE

On Aug. 16, four Montana legislators traveled to Boise to meet with fellow members of the Legislative Council on River Governance (LCRG). The two-day meeting brought together legislators from the four states--Montana, Idaho, Washington, and Oregon--in which the majority of the Columbia River Basin lies to hear presentations and discuss items of common interest related to energy and dams, fisheries, the Endangered Species Act, interstate water quality and quantity, drought, and agreements with tribal authorities. Sens. Bea McCarthy and Bill Tash and Reps. Ron Stoker and Steve Gallus represented Montana at the meeting.

A history of the LCRG and its relevance to Montana is the subject of an article written for the Dec. 2002 issue of *The Interim* by Stephen Maly, former research analyst and staff to the LCRG's Montana delegation. The article is available on the legislative branch website under the "Publications" link.

The LCRG is organized under the auspices of the Council of State Governments-West (CSG-West). Its mission statement reads: "The purpose of the Legislative Council on River Governance is to assert state legislative duty and authority over natural resources and river governance, and to unite states for a proactive agenda of legislative action and communications." The mission statement also identifies the following as issues common to all four states:

1. Endangered Species Act and Clean Water Act
2. Reasserting the State's authority over its water rights
3. Lack of meaningful role for legislatures -- need for legislative participation in decision making process
4. State sovereignty issues -- keep federal government off of state turf
5. Need to work on a coordinated basis between states
6. States want a place at the table in the federal decision making process as it relates to state issues; recognize dual sovereignty
7. Protect what states already have (legislation in place for resource management)
8. Tribal relations
9. Federal agencies conflict

The meeting in Boise touched on a number of the items listed above. Council members heard from a representative of the National Marine Fisheries Service on artificial propagation and salmon recovery, including criteria that are used to gauge

the health of salmon populations, the role of hatcheries, hatchery policies, and an inventory of salmon and steelhead and their most recent status under the Endangered Species Act.

The western hub manager for the Bonneville Power Administration discussed BPA's policy proposal for power supply for fiscal years 2007-2011, post-2011 contracts and rates, and BPA rates for fiscal years 2005 and 2006. Council members also received a history of water runoff in the Pacific Northwest from 1929 through the current year. The 2004 projection indicates that the runoff will be 83% of the 60-year average.

Staff of the Idaho Water Resources Division reported on interstate water quantity coordination involving Idaho, Washington, Wyoming, Utah, and Nevada, providing details of the various compacts and agreements among those states. There have also been water quality agreements developed between Idaho and the states of Oregon and Washington to jointly establish Total Maximum Daily Loads for submission to the EPA.

Council members discussed with BPA program managers proposed summer spill modifications. Summer spill involves spilling water over a dam to benefit salmon migrating downstream. The activity reduces the generation of hydropower because the spill water is not flowing through the dam's turbines. BPA representatives told the council that on a 50-year average basis, summer spill is estimated to cost \$77 million. The agency maintains that reducing spill would mitigate the dollar loss and would not significantly impact endangered or threatened fish, for which several other means exist for dam passage. The impact on fish is the subject of intense debate, however, and the controversial proposal by BPA and the Army Corps of Engineers to reduce spill has been tied up in the courts.

The meeting concluded with an overview of the Nez Perce Agreement in Idaho's Snake River Adjudication and a presentation by Washington Governor Gary Locke's chief of staff regarding Locke's contentious Columbia River Initiative. A goal of the initiative is "3 buckets in for every 2 buckets out" to meet the region's water supply needs and reduce the risk to fish. It centers around water conservation, improvements to storage pooling, developing new storage, and various means of water acquisition (purchasing of water rights). The proposal has rankled irrigators in the region (who also addressed the council) who are not convinced that further appropriations from the Columbia River will adversely affect fish and who view the initiative as a poorly-conceived political move by a lame-duck governor aimed at delaying and confusing the issuance of new water rights.

Council members discussed and reaffirmed the importance of the group in keeping legislators apprised of developments in the Columbia River Basin and in making sure state lawmakers participate in decisions that are made, most often at the federal level, that affect the entire basin. The group plans to meet again in December. For more information about the council's meeting in Boise, contact Leanne Kurtz at 444-3064 or at lekurtz@mt.gov.

## ENVIRONMENTAL QUALITY COUNCIL

Council Reviews Agency Legislative Proposals at July Meeting... At its July meeting, the Environmental Quality Council reviewed legislative proposals from the Department of Natural Resources and Conservation and the Department of Fish Wildlife and Parks.

A panel discussed the Department of Environmental Quality's implementation of the Total Maximum Daily Load program. The council reviewed the state regulation of artificial ponds, the regulation of portable hay grinders for air quality, the status of the sage grouse management plan, and proposals received by DNRC for grant funds from the Renewable Resource Grant and Loan program.

Council to meet in September... The council will hold its final meeting of the interim on Monday and Tuesday, Sept. 13 (10 a.m.) and 14 (8 a.m.), in Room 102 of the state Capitol. The Energy Policy Subcommittee will meet at 8 a.m. on Sept. 13 (see below).

The council will complete the HJR 4 study on state water management and allocation. An important part of the study is a proposal to facilitate and finance the completion of water rights adjudication in Montana. The council will discuss the recommendations of the water adjudication working group. The working group is developing legislation that would impose a fee on all water rights in Montana. The bill draft, fee matrix, and timeline are available on the council's website. For more information on water policy issues, contact Krista Lee Evans at (406) 444-1640 or kevans@mt.gov. Other agenda items include:

- review of DEQ's 2005 legislative proposals;
- review of public comments and final action on staff white paper on the status of metal mine bonding in Montana;
- review of a staff white paper on the status of reclamation and water quality at the Zortman and Landusky mines (HJR 43); and
- proposal to establish cleanup standards for methamphetamine contaminated property.

Agency Oversight Subcommittee Interim Work Completed... The subcommittee met for the last time this interim in July. The subcommittee held oversight hearings on the DEQ's enforcement policy on the use of supplemental environmental projects as part of penalty settlements; on state agency violations of environmental laws; and on the PCB contamination at the Big Springs fish hatchery. The subcommittee also discussed litigation related to the Montana Environmental Policy Act.

Energy Policy Subcommittee Adopts

Recommendations...At its July meeting, the subcommittee unanimously approved the draft interim report and draft legislation. The full council unanimously approved the subcommittee's interim report and proposed legislation. The subcommittee will meet on Sept. 13 at 8 a.m. in Room 102 of the Capitol. The subcommittee will review a draft state energy bonding brochure and two draft EQC energy publications. The Department of Transportation will discuss the implementation of the alcohol fuel tax incentive.

Minutes of past meetings, agendas, and additional information about the Environmental Quality Council are available on the EQC website. You may contact staff at (406) 444-3742 or eqc@mt.gov.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Last Meeting of the Interim in August...The committee held its final meeting of the interim on Aug. 27. The committee planned to finish its work on the SJR11 study of drug prevention, intervention, and treatment. A recommendation may include the creation of a chief drug prevention and treatment officer that would be attached to the governor's office. The committee reviewed proposals from the governor's Methamphetamine Summit. The Department of Public Health and Human Services presented additional legislative proposals for the 2005 session.

The committee adopted its legislative package and approved a draft final report.

Meeting materials and draft committee legislation are available on the committee's website. The results of the meeting were not available at press time and will be posted on the committee's website.

For more information, please contact Susan Byorth Fox at (406) 444-3597 or sfox@mt.gov

## SJR 32 SUBCOMMITTEE ON MEDICAL LIABILITY INSURANCE

Subcommittee Makes Recommendations in June...The SJR 32 Subcommittee has been studying medical liability insurance. It met on June 24 to consider 10 legislative proposals. The subcommittee approved eight of the proposals and will present them to the Legislative Council for further consideration and action. The proposals are:

- LC 5000: *Montana Health Care Liability and Injured Patients and Families Compensation Act*. This proposal, if adopted, would create an "excess liability insurance plan" in which medical providers and facilities would participate and through which all claims of medical negligence or malpractice must be processed. The proposal is similar to a program enacted in Wisconsin in the mid-1970s. An overview

of the Wisconsin act is on the subcommittee's website, under "Reports".

- LC5001: providing that for purposes of a medical malpractice claim, liability may not be imposed on a health care provider or health care facility for an act or omission by a person or entity claimed to have been an ostensible agent of the health care provider or health care facility at the time that the act or omission occurred.
- LC 5002: providing that an insurer against medical malpractice need not pay and may not be ordered by a court to pay any type of damages, including but not limited to medical expenses and lost wages, prior to a final settlement or a judgment when liability for the act or omission and liability for the damages are reasonably clear.
- LC 5004: providing that for purposes of a medical malpractice claim, a health care provider or health care facility is not liable for an act or omission by a person or entity that was not an employee or agent of or otherwise under the control of the health care provider or health care facility at the time that the act or omission occurred.
- LC 5005: regulating the amount of damages that may be granted for medical malpractice that reduces a patient's chance of recovery.
- LC 5007: making expressions of sympathy or benevolence to an injured person or an injured person's family inadmissible as evidence of an admission of liability in a civil action.
- LC 5008: providing for qualifications for medical malpractice expert witnesses.
- LC 5009: providing for a joint underwriting association, consisting of all medical malpractice insurers operating in the state, that would provide medical malpractice insurance. This proposal would reestablish a statutory program that was enacted in response to the first medical malpractice insurance crisis, which occurred in the mid-1970s.

The subcommittee decided not to recommend two of the proposals:

- LC 5003: providing that a third-party claimant may not bring an action for bad faith in connection with the handling of a medical malpractice insurance claim.
- LC 5006: revising the Medical Malpractice Legal Panel Act by: requiring a claimant before the panel to pay half of the costs of the panel; increasing the maximum time in which a claim must be heard;

requiring a legal record be made and kept of the panel hearing; and providing that the record, documentary evidence that is submitted, and panel decision are admissible in an action subsequently filed in a court.

The LC numbers attached to the drafts are informal tracking numbers. None of the draft bills has been officially requested. Each of the draft bills has been posted to the subcommittee's website. The draft bills that are marked as NEW on the website are the versions recommended to the Legislative Council.

The subcommittee will present its final report to the Legislative Council on Friday, Sept. 17, beginning at 8 a.m. in Room 137 of the Capitol

Subcommittee reports, agendas, and meeting minutes are available on the subcommittee's website. For more information, contact Dave Bohyer, subcommittee staff, at (406) 444-3064 or dbohyer@mt.gov.

## STATE-TRIBAL RELATIONS COMMITTEE

Committee Begins Final Deliberations...The State-Tribal Relations Committee began its final deliberations on Aug. 17. The committee heard reports from various state agencies and discussed legislative recommendations.

Jobs for Montana Graduates...Lorelee Robinson, state coordinator of Jobs for Montana Graduates, presented a report on program results, the program's budget, and a middle school program. This report was a follow-up to a committee information request. In 2002-03, JMG Indian participants had a 94% graduation rate, a 79% positive outcome rate, and a 97% non-senior return-to-school rate. A positive outcome is defined as a graduate who finds employment, enlists in the military, or enrolls in a postsecondary institution. The 2003-04 results will not be available until next June.

JMG is supported by the state general fund and private grants. The cost per student is around \$800. The program would like to offer more college scholarships to their students because JMG students tend to be low-income and have a lower GPA. The program has established a not-for-profit foundation to raise money for scholarships.

JMG applied for a grant from the Montana Board of Crime Control to develop a middle school program. The money would have been used to develop the necessary program components and curriculum. Unfortunately, JMG did not receive the grant. However, the Harlem Middle School developed its own program by adapting the JMG model for seventh and eighth graders. The school was very pleased with the results and hopes to be able to continue the program. Robinson said that JMG is still interested in developing a middle school program but will need to identify other resources.

House Joint Resolution 43...Larry Mitchell, Legislative Environmental Policy Office, presented his report on HJR 43, a study of the effects of the Zortman and Landusky mines on the surface water and ground water in the area around the mines. The two major problems are water treatment beyond the year 2017 and the degradation of Swift Gulch. The report is being circulated for public comment. The final report will be presented to the Environmental Quality Council in mid-September. EQC members will visit the mines on Sept. 9, and members of the State-Tribal Relations Committee were invited to join them.

Gaming Advisory Council...Gene Huntington, Gambling Control Division, presented a legislative proposal that would clarify the procedure for negotiating and executing gaming compacts with Indian tribes. The Gaming Advisory Council developed the proposal following many meetings with Indian tribal representatives. The main contention centers on the delegation of authority to negotiate compacts. The tribes believe that the executive branch has not negotiated in a way that recognizes the sovereignty of each tribe and the goals of the Indian Gaming Regulatory Act. The executive branch does not believe that the Legislature has given it authority to negotiate compacts that are unrestricted by state law. This legislative proposal would expressly authorize the governor to negotiate and execute gaming compacts. It allows the governor to negotiate conditions of play (hours or periods of operations, numbers of gaming devices, and limitations on wagers and prizes) that will provide for the economic self-sufficiency of Indian tribes. If a tribe negotiated for types of gaming that are not permitted by Montana law or if a compact would result in a reduction of state revenue or require a state appropriation, the compact would have to be submitted to the Legislature for approval. Prior to the execution of a compact, the governor would provide written notice to legislative leadership. This would allow the Legislature the opportunity to comment on the compact.

The committee requested that the proposal be drafted on behalf of the Department of Justice.

House Joint Resolution 8...In the final report on the dropout prevention study, Connie Erickson, committee staff, presented the following recommendations:

- Adopt a formal policy acknowledging that every child has the right to succeed in school.
- Establish a program within the Office of Public Instruction dedicated exclusively to dropout prevention.
- Require every school district to develop a plan for addressing the needs of at-risk children.
- Implement a student accounting system that will track students as they withdraw from school. (OPI has a tracking system in place. Schools are required to provide OPI with extensive information on

dropouts. However, OPI does not gather data on why students drop out of school; this data is captured only at the district level.)

- Establish a system for identifying at-risk students as early as possible and design an intervention procedure.
- Provide diploma options to high school students who are at-risk of withdrawing from school.
- In predominantly Indian schools, establish a cultural congruency between the school and the Indian community.

Erickson told the committee that the Legislature is limited in its ability to require the Board of Public Education or school districts to implement certain programs because of a 1992 district court decision that vested the Board of Public Education with constitutional rule-making authority and because of the unfunded mandate laws (1-2-113 and 1-2-114, MCA). The committee asked staff to draft legislation based on these recommendations, taking into account the legal limitations.

State-Tribal Economic Development Commission...The State-Tribal Economic Development Commission met with the committee to discuss the commission's work and to request legislation. The commission has been working with the Office of Economic Opportunity to develop memorandums of understanding between the tribes and the state to cooperate on matters relating to economic development. The commission has co-sponsored economic development conferences and workshops to assist tribes in bringing economic development to their reservations. The commission also discussed the importance of tribal business information centers or TBICs. TBICs were originally funded by the Small Business Administration and located at tribal colleges. They provided technical assistance to Indians seeking to establish small businesses. Indian entrepreneurs have unique needs and problems that small business development centers cannot adequately deal with. In recent years, SBA has cut funding and many TBICs have been forced to close.

The commission requested four pieces of legislation from the committee:

- remove the sunset provision from the original legislation creating the commission;
- request continued funding for the commission;
- change the quorum requirements for commission decisions; and
- request state funding for the TBICs.

Decisions in September...The committee will hold its final meeting of the interim on Wednesday, Sept. 8 in Room

102 of the Capitol. The committee will review the HJR 8 legislative proposal, the State-Tribal Economic Development Commission legislative proposals, and other legislative proposals requested by committee members. Final recommendations will be made at the meeting.

## LEGISLATIVE COUNCIL

Council to Meet in September...The Legislative council will meet Thursday and Friday, Sept. 16 and 17 in Room 137 of the State Capitol.

The meeting on Sept. 16 will begin at 1 p.m. The council will provide consultation on three proposed transfers of Department of Corrections property. Legislative staff will report on fiscal year 2004 revenue collections and expenditures; recent court challenges to state statutes; the code commissioner bill; and the results of a computer use survey of legislators. The council will approve a 2007 biennium budget for the Legislative Services Division and interim committees and activities and a 2007 biennium legislative branch information technology plan and budget. The council will also approve proposed legislation for council sponsorship. Other agenda items include review and approval of a pay plan for session employees and prices for the 2005 legislative proceedings.

The meeting on Sept. 17 will begin at 8 a.m. The council will discuss and adopt the report of the SJR 32 Subcommittee on Medical Liability Insurance.

For more information about the Legislative Council, call Lois Menzies at (406) 444-3066 or send an e-mail to lomenzies@mt.gov

## STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee Finishes Interim Work in June...The State Administration and Veterans' Affairs Interim Committee met on June 14. The primary purpose of the meeting was to review legislative proposals presented by state agencies for consideration by the Legislature in 2005. The committee is responsible for reviewing proposed legislation from the Department of Administration, the Department of Military Affairs, and the Office of the Secretary of State, including entities that are attached to any of the agencies (e.g., the Board of Veterans' Affairs or the Public Employees Retirement Board). The committee also reviewed proposed legislation from veterans (license plates) and from retired firefighters (benefit adjustments).

The committee requested that approximately 50 bills be drafted on behalf of the agencies. Each entity proposing legislation is responsible for finding bill sponsors and for ensuring the preintroduction of each bill.

Highway Patrol Recruitment and Retention...Based on the recommendations of the MHP Subcommittee, the committee requested a committee bill, LC 0125. The purpose of the proposal would be to adequately fund in a predictable and sustainable manner the authorized level of uniformed officers of the Montana Highway Patrol and to pay highway patrol uniformed officers on the basis of an index reflecting the pay levels of local law enforcement officers in Montana's seven or eight most populous counties and the cities and towns within those counties. Funding for the recommended staffing and pay levels would come from a fee of \$5 a year on each automobile liability insurance policy sold in Montana. Revenue from the fee would be earmarked for the MHP, specifically to mitigate problems of recruitment and retention of uniformed officers and, if sufficient funds are available and appropriated, to expand the uniformed force.

Committee Chair Appreciates Participation...At the end of the meeting, Sen. Joe Tropila, committee chairman, thanked the members, the representatives of the agencies and other entities appearing before the committee, the veterans' groups who participated in committee discussions and activities, and the interested members of the public. With that salute, the committee concluded its activities for the 2003-04 interim.

For additional information about the committee, contact Dave Bohyer at (406) 444-3064 or dbohyer@mt.gov.

## ECONOMIC AFFAIRS COMMITTEE

Committee Meets in September...The Economic Affairs Interim Committee had its last scheduled meeting of the interim on Sept. 7. Items on the agenda included final reports and legislative review of the SJR 17 study on simplification of workers' compensation. The agenda also included a discussion of a fund of funds bill to support Montana businesses in need of equity capital. Coverage of the meeting will be in the next issue of **THE INTERIM**. Information about the meeting is also posted on the committee's website.

## REVENUE AND TRANSPORTATION COMMITTEE

Next to Last Meeting...The Revenue and Transportation Committee is meeting at 8 a.m., Sept. 9 in Room 137 of the Capitol. Some agenda items include:

- analysis of the corporation license tax base;
- recent trends in the value of class eight business equipment by industry type;
- preliminary calculation of the class eight property tax

exemption trigger;

- ownership criteria for classification as agricultural land;
- bill draft request from the Department of Revenue to revise the valuation of agricultural land;
- legislative proposals of the Liquor Store Owners Association;
- use of recycled glass in road base and in local markets;
- discussion of legislation related to signs on secondary roads (committee bill) and prohibition of open containers in motor vehicles;
- status of the highway special revenue account; and
- update on the Highway 2 environmental impact statement.

The Department of Revenue will ask the committee to request a bill draft to revise the valuation of agricultural land. The department will provide more detail on the proposal at the November committee meeting, at which time the committee will decide whether to proceed with the request.

The full agenda is on the committee's website. If you want more information about the committee, contact Jeff Martin at (406) 444-3595 or jmartin@mt.gov, or Leanne Kurtz at (406) 444-3593 or lekurtz@mt.gov.

## LAW AND JUSTICE COMMITTEE

Public Defender Reform Proposed...The Subcommittee on Public Defender Reform finished its work on Aug. 9 and presented its recommendations to the Law and Justice Committee on Aug. 10. The committee discussed the provisions of the bill and tentatively adopted the subcommittee's recommendations. The committee will continue to work on the proposal and will take final action on the bill at its final meeting on Sept. 8.

The following provisions were added to the proposal for a statewide public defender system:

- the new statewide public defender system would encompass not only district courts and justice courts, but also city and municipal courts; and
- applicants for a public defender will be screened not only for eligibility and indigence, but also for partial indigence. That is, an applicant who is not indigent but who is still financially unable to retain private counsel would be eligible to have a public defender. The applicant would pay some of the costs for the

public defender according to the applicant's ability to pay.

The committee requested additional information on how other states define indigence and partial indigence; who pays for psychiatric evaluations and under what circumstances; and more information on public defender costs associated with district courts, justice courts, and city and municipal courts. The committee will use the financial information for developing a cost-sharing formula between the state and local governments.

The agenda for the Sept. 8 meeting and the latest version of the public defender bill draft will be available on the committee's website. For more information, please contact Sheri Heffelfinger at (406) 444-3596.

## LEGISLATIVE FINANCE COMMITTEE

LFC Meeting Oct. 7 and 8... The Legislative Finance Committee will meet Thursday and Friday, Oct. 7 and 8 in Room 137 of the Capitol. The meeting is tentatively scheduled to begin at 1 p.m. on Thursday. Committee staff will present the "Big Picture Report", which is a "broad-brush" analysis of the revenue and expenditure outlook for the 2007 biennium. Several other reports are being prepared for this meeting and, along with an agenda, can be found on the Legislative Fiscal Division website a week or two prior to the meeting. The website address is <http://www.leg.mt.gov/css/fiscal/default.asp>, or you can contact Clayton Schenck for more information at [cschenck@mt.gov](mailto:cschenck@mt.gov) or at (406) 444-2986.

## SUBCOMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET

Subcommittee Meets Jointly with Board of Regents... The subcommittee met jointly with the Board of Regents on July 7 in Pablo at the Salish-Kootenai College. Members of the Shared Leadership Project presented six action initiatives for economic development in Montana. These six initiatives include:

- Workforce Training and Education
- Distance Learning
- Montana University System–Business Partnerships
- Montana University System and Government Collaboration
- Promote and Enhance Access to Postsecondary Education
- Montana University System – Montana Promotion

### Partnership

Initiative Priorities Established... Meeting participants discussed each of the six initiatives and decided to focus time and resources on three of them for immediate action: Workforce Training and Education; Promote and Enhance Access to Postsecondary Education; and Distance Learning. Although these initiatives were unanimously given top priority, everyone agreed that all six initiatives are very important and that the other initiatives deserve prompt attention.

Subcommittee Adopts Proposal for Joint Resolution... The subcommittee approved a joint resolution on "Shared Leadership Project for a Stronger Montana Economy." The joint resolution requests "that the Legislature continue to support the efforts of the Board of Regents of Higher Education and the Montana university system to partner with the legislative and executive branches and the private sector to strengthen the state's economy by implementing those initiatives identified" in the documents discussed above. In September, the subcommittee will present this draft resolution to the Education and Local Government Interim Committee and ask the committee to request a bill draft of the resolution.

Postsecondary Education Policy Goals and Accountability Measures... The subcommittee unanimously approved renewing its agreement, originally approved in 2002, with the Montana university system that identifies policy goals and accountability measures "that will be used as an assessment tool for policymakers, the university system, and the public." As part of this agreement, the Montana university system will prepare a biannual accountability report to be presented to the Legislature and made available to the public.

Next Step... The July meeting was the subcommittee's final meeting of the interim. On Sept. 15, the subcommittee will report to the Education and Local Government Committee on its recommendations and interim activities. For more information about the subcommittee, please contact Alan Peura, Legislative Fiscal Division, at (406) 444-5387 or [apeura@mt.gov](mailto:apeura@mt.gov). Meeting information is on the subcommittee's website at <http://leg.mt.gov>. Just click on "Committees" and follow the links to the Education and Local Government Committee, Postsecondary Education Policy and Budget Subcommittee.

## TIME AND TIDE

(Tempus fugit)

<u>Event</u>	<u>Days remaining</u>
Target date for completion of interim committee work (Sept. 15, 2004)	15

---

General election (Nov. 2, 2004)	63	59th Legislature convenes (Jan. 3, 2005)	125
------------------------------------	----	---	-----

---



## THE BACK PAGE

REFLECTIONS OF A DRUDGE<sup>1</sup>

By Jeff Martin  
Legislative Research Analyst

"He has panache."

"Panache?"

"It means flamboyance."

"I know what it means."

"Really? I had to look it up." *In the Line of Fire*

"You keep using that word. I don't think it means what you think it means."  
Inigo Montoya, *Princess Bride*

## SOUNDS LIKE A PERSONAL PROBLEM

Public policy, especially those pesky public policy "issues" that linger through the interim, wears thin in the waning days of summer (autumn nosed around Helena the first weekend in August). Is an acceptable tax reform proposal going to be offered? In Montana, does tax reform mean anything other than a sales tax? How can we improve education in Montana, and how much is it going to cost? How do we deal with drug addiction among our young people? Is tort reform possible or desirable? Can we attract high paying jobs to Montana without some sort of an incentive? Who pays how much for water adjudication? If I hear "policy issues" one more time, or, even worse, "step up to the plate" or "my plate is full" I'm going to jump out of my office window.

To soothe my fragile sensibilities and to distract myself from the weighty concerns of state, I stray from the usual technical discussion in the Back Page and muse on word usage.

Let me begin with a confession: I'm a rotten dad. Not long ago, I introduced my sons to the pleasures of pipe smoking. I bought each of them a pipe and villainous tobacco. I started them down the path of this minor vice (not, in our case, a habit) with cigars. We spent more than one cold winter night bundled up on the outside deck (subfreezing temperatures focus the memory more so than the languid days of summer) puffing away on Thompsons, Cuesta Reys, Garcia y Ortigas, and the occasional fruity variety. As much as I enjoyed cigars, and the conversation, I couldn't take the cigar hangover. It was time to move on to pipes. For Sherlock Holmes, a particularly vexing mystery could turn into a three-pipe problem (he used that other stuff only when he was bored). A three-pipe bill draft has to be done on my own time, outside.

But leading my issue astray is not why I'm a rotten dad. I spoke on the phone with my older son a while back; he said

that he and a roommate smoked pipes much to the "chagrin" of another roommate. I should have resisted the impulse, but I couldn't. So I asked, "why embarrassed?" The 1973 edition of *The American Heritage Dictionary* defines chagrin as "a feeling of embarrassment or humiliation caused by failure or disappointment." As many other people do, my son thought that chagrin means disillusionment or contempt.

In a previous job, a boss once told me that he would be "reticent" to do a particular thing. Being a young underling, I didn't say anything; I have no such qualms today. But the battle may be lost. *The American Heritage Dictionary* has added reluctant; unwilling to its definition of "reticent;" it used to just mean silent or reserved.

## A MATTER OF RIGHT AND WRONG

When one goes looking, it is easy find examples of words misused. An article in a local newspaper reported on the "fulsome praise" given to an individual. Fulsome praise does sound laudatory, but it is not. The recipient of fulsome praise, if such praise were possible, would be an incompetent boob. Same newspaper, different day, an article suggested that taking care of a particular problem would be as tough "to resolve as the Jumble puzzle." I can solve that puzzle only occasionally (last time Aug. 17), but I am resolved not to let it get me down (I'm lying, it does get me down).

In the course of bloodying this copy, I struck a sentence about the redundancy of "free gift." Some time later, I was reading *From Dawn to Decadence* by Jacques Barzun, and just before my lips gave out, I stumbled across "free gift." I was shocked; shocked and disappointed that a highly regarded scholar would resort to such a plebeian phrase (oops--"out-of-town word"--see Kilpatrick, below).

Believe it or not, at least one tax publication is getting into offering tips on proper word usage. In the May 29 issue (not edition) of *State Tax Notes*, Robert F. Manning relays the story of a lawyer penalized for bad writing. The opening paragraph is worth quoting in its entirety:

It was long overdue, but it has finally happened. A lawyer's sloppy writing has cost the lawyer--rather than the client--money. As reported in *The New York Times* and in *The Legal Intelligencer*, a winning lawyer's requested fee of \$300 an hour was reduced by the court to \$150 an hour, in part because the lawyer's court filings were laced with typos, and his prose was, according to Magistrate Judge Jacob P. Hart, "vague, ambiguous, unintelligible, verbose and repetitive."<sup>2</sup> (Adam Liptak, "Judge finds a Typo-Prone Lawyer Guilty of Bad Writing," *The New York Times*, Mar. 4, 2004; Shannon P. Duffy, "Judge Slashes Lawyer's Rate for Typos, Careless Writing" [an unfortunate headline--the

<sup>1</sup>Lexicographer: "a writer of dictionaries; a harmless **drudge**, that busies himself in tracing the original, and detailing the signification of words." Samuel Johnson, *Dictionary of the English Language*, (1755).

<sup>2</sup>This strikes me as a bit of verbal overkill, but I suppose judges are not prone to such phrases as "he's a crappy writer."

lawyer had a rate for typos?<sup>3</sup>], *The Legal Intelligencer*, Feb. 25, 2004. The case is *Devore v. City of Philadelphia*.<sup>4</sup>

Thank goodness bill drafters don't get to vote on the bills they write; the legislature gets the blame for what justices consider bad law. But I can imagine the glaring headline in my worst session nightmare:

### High court requires bill drafter to reimburse state for revenue shortfall

In *Mills v. State Board of Equalization*, Chief Justice Llewellyn Callaway may have opened the door just a crack for such a result. The case involved the constitutionality of a graduated income tax surtax imposed during the Extraordinary Special Session of 1933-34. Montana had just adopted the income tax in 1933. The court held the surtax unconstitutional. Although there was a lot of tax talk in the decision (you know the drill--equal protection, discrimination, that sort of thing), the misuse of semicolons contributed to the tossing the new law. Because of inappropriate punctuation and phrasing, the surtax was neither graduated nor progressive.<sup>5</sup> In a mostly concurring opinion, Justice Callaway noted that the legislature, "by employing the pen of a more skilled draughtsman" could entail "ills upon the people beyond their sufferance."<sup>6</sup> Might not a future court bring such a rascal, skilled or not, to justice for aiding and abetting such a grievous end, just to set an example?

Back to reality. In his article, Manning identifies about two dozen words that are "misused and confused." He notes that writers and speakers use *anxious* when they mean *eager*. Someone might say, for example, "we're anxious to have this policy enacted." Perhaps that particular formulation is intended to convey the dire consequences if the policy is not adopted. Manning warns not to confuse "*parameter* (a mathematical term) with *perimeter* (a boundary, limit, guideline, or similar words)." My advice would be to use *parameter* only in a discussion of population characteristics ascertained by statistical analysis. The chance, then, of misusing that word is greatly reduced. *Presently* means

<sup>3</sup>I'm willing to cut a little slack here; headline writers are often constrained by available space and may have to fudge the rules a bit.

<sup>4</sup>Robert F. Manning, "What's the Good Word," *State Tax Notes*, Vol. 31, Number 13, p. 1101

<sup>5</sup>The result of the goof-up was that a person whose net income was \$4,000 would pay a surtax of \$20, while a person whose net income was \$100,001 would pay a surtax of twenty-five cents. A person whose net income was \$99,000 would be knicked for \$4,560.

<sup>6</sup>Justice Callaway was ready to jettison the whole income tax, but the court had already decided that the new tax was constitutional.

soon, not currently or now. A weather forecaster reported one morning that the temperature is presently 58 degrees.

Pop quiz: which of the following pairs words (taken from Manning's examples) do you use correctly: enormity, enormous; fortuitous, fortunate; enervate, energize; fewer, less (an easy one); viable, feasible; just desserts or deserts. The *Readers' Digest* scoring system does not apply here.

### TEMPEST IN THE TEAPOT

James J. Kilpatrick in his book *The Writer's Art* says that he writes from a prescriptive point of view (with no apologies, I might add). He says "two groups of mariners sail the semantic ocean. There are descriptive linguists, whose primary concern is with what is. And there are prescriptive linguists, whose primary concern is with what should be." I don't quite get the sailing metaphor other than the inherent dangers of the capriciousness of the ocean (language). I wouldn't get on a sloop with a descriptive helmsman who was unconcerned about the difference between hard ale and jibe-ho. Perhaps a better metaphor would be two types of cops on the semantic streets: regular and keystone.

Some people take this prescriptive-descriptive business seriously. H.W. Fowler's *Modern English Usage* is often cited as the best usage manual. The book has been updated by Sir Ernest Gowers, apparently with little harm, and by Robert Burchfield. It was the Burchfield version that caused this outburst:

Burchfield's wildly descriptionist perversions of [Fowler's] classic prescriptionist masterpiece have assured him a definite place in Hell. I made the horrid mistake, in innocence, of purchasing a copy, and now look forward to emulating Nero Wolfe's treatment of the *Webster's Third* by feeding the pages into a roaring fire, one by one.<sup>7</sup>

In Kilpatrick's book we learn of his long-standing dispute with William F. Buckley on the use of unusual words ("out-of-town words"). Kilpatrick admonishes: "No advice is more elementary, and no advice is more difficult to accept: When we feel an impulse to use a marvelously exotic word, let us lie down until the feeling goes away." Buckley argues, in the book's foreward, that there are reasons for using unfamiliar words: "It can be a matter of rhythm, it can be a matter of exact fit--and it can be something by way of obeisance to the people whose verbal appetites created the need for such a word. . ."

Kilpatrick confesses to two instances of yielding to temptation: using *limicolus* (a word that might have been used once before by a person studying the habitat of salamanders) in an editorial; and asserting that "political

<sup>7</sup>Anon., "The English Language", The Owlcroft House, <http://owlcroft.com/english/list.shtml>. The Owlcroft House is located somewhere south of Ritzville, Washington.

action committees tend to multiply mitotically." (This before the proliferation of 527 organizations under the McCain-Feingold campaign reform bill.) But, according to Kilpatrick, Buckley sins willingly and unrepentantly. Buckley has been seduced and corrupted by *decoctable*, *anafractuosity* (I use this word all the time--proving the proposition that nobody reads final reports), *chiliastic*, *phogistonic*, *sciolism*, *hubristic* (all the people I know are humble), *osmotically* (I remember this word from high school biology), *repristinate*, *adumbrated*, and *synechdoche*. The log in Buckley's eye is not so large that he can't return a stone or two. Again in the book's foreward, Buckley observes that Kilpatrick, in the paragraph following the bill of particulars against Buckley, "uses in a dense little cluster, *arcane*, *syntacatically*, and *bilbulousness*. And this notwithstanding that there are those who believe that *arcane* is an arcane word, that *syntactically* can be made to sound like the malapropism of someone far gone in bibulousness."<sup>8</sup>

My views are closer to Kilpatrick's, but in the spirit of Reb Tevye in "Fiddler on the Roof," both are right. Reflecting on word choice results in better writing even if the right word may be unusual. A writer cannot constantly fret because a reader might have to flip open a dictionary. An example serves to illustrate how Kilpatrick's and Buckley's standards may be violated. In an editorial on the recent Democratic national convention, a writer makes reference to the TV ratings: "The complaint about the Democratic Convention from critics is that it is boring, hence television ratings have been exiguous." Exiguous? Well, exiguous (it means scanty; meager--I had to look it up) is certainly an out-of-town word and it does not feel like an exact fit (given the tone of the rest of the article, the author could have said the ratings were lousy). To the observation itself, I'd say no kidding. Only political junkies of the most dedicated sort would watch either party's national convention. The Democrats have (and the Republicans soon will) trotted out the usual suspects to preach to the party faithful. As for myself, I'd rather watch instant replays of moves in a chess match between Garry Kasparov and "Deep Blue" or watch Ken Jennings whup up on "Jeopardy" pretenders.

### ME, MYSELF, AND I

Skimming lightly on the surface of the last sentence is the perfect segue into the next peeve. Jennings mentioned on a recent "Jeopardy" that people who use "less" when they mean "fewer" or say "between you and I" sounds to him like finger nails going down a chalkboard. Hear, hear, Ken! I have two theories on the widespread use of "between you and I." To make the point, I slip into a bit of pedantry. Feel free to skip over the next paragraph (I bored myself writing it); but don't ever say "between you and I" again.

Unlike many other languages, English is not highly inflected. For example, nouns and adjectives don't change form based

on their function in a sentence. The noun *book* is book whether it is used as a subject, direct or indirect object, or the object of a prepositional phrase. In Russian, nouns and adjectives have six different word endings depending on their function in a sentence. For example, the Russian word for book is *kniga*; as subject of a sentence it is *kniga*; as direct object it is *knigy*; as the object of a prepositional phrase it is *knige*. The same scheme applies to Russian pronouns. In English, most pronouns are inflected (except *you*) as in "We gave the book to *him*." but a lot of us may have forgotten that bit of grammar as it applies to *I*. A more convincing theory involves psychological trauma. As kids, we all probably said more than once something like "Me and Ray are going outside," only to be corrected by some stern grammarian--"Ray and I. . ." We don't use *me* because we're afraid of getting our knuckles rapped.

I have no idea why the reflexive *myself* crops up in this way: "Sgt. Snorkel, Sgt. York, and myself arrived at the crime scene. . ."

### GOOD READING

Besides Kilpatrick's book (and Fowler's, which I have not read), there are several excellent books on good writing and usage: John Simon's *Paradigms Lost* (written before *paradigm* became misused and confused), Strunk & White's *Elements of Style*, and *The Guide to News Writing* published by the Associated Press. I don't recommend Edwin Neuman's *Strictly Speaking* (going for \$3.50 on eBay) or William Safire's *On Language*. Each author's prose is sleep-inducing, and neither has Kilpatrick's panache.

---

<sup>8</sup>WordPerfect's dictionary recognizes only four of the "out-of-town words" used by WFB and JJK.



# INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
September 2004						
			1	2	3	4
5	6 Labor Day--Holiday	7 Economic Affairs Interim Committee, Room 137, 9:30 a.m.	8 Law and Justice Committee, Room 102  State-Tribal Relations Com- mittee, Room 102	9 Revenue and Trans- portation Committee, Room 137, 8 a.m.  Energy and Tele- communications, Room 102	10 Energy and Tele- communications, Room 102	11
12	13 Energy Policy Sub- committee, Room 102, 8 a.m.  Environmental Quality Council, Room 102, 10 a.m.	14 Environmental Quality Council, Room 102, 8 a.m.  Education and Local Government Com- mittee, Room 137	15 Education and Local Government Com- mittee, Room 137	16 Legislative Council, Room 137, 1 p.m.	17 Legislative Council, Room 137, 8 a.m.	18
19	20 Legislators Back to School Week, Sept. 20-24	21	22 Montana Heritage Commission, Virginia City	23	24	25
26	27	28 Legislative Audit Division. Room 137	29	30		

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
October 2004						2
3	4	5	6	7 Legislative Finance Committee, Room 137, 1 p.m.	8 Legislative Finance Committee, Room 137, 8 a.m.	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## **COMING IN NOVEMBER**

November 15, Revenue and Transportation Committee

November 16, Legislative Council

November 16, Legislative Finance Committee

November 17, House and Senate caucuses, 8 a.m.-12 p.m.

November 17, Legislative rules workshop (afternoon)

November 17, New legislator orientation (evening)

November 18, New legislator orientation (all day)

November 19, New legislator orientation (all day)

November 20, Football, Bobcats v Grizzlies, Missoula







LEGISLATIVE SERVICES DIVISION  
PO BOX 201706  
HELENA MT 59620-1706